

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Assessment and Collection of  
Regulatory Fees for  
Fiscal Year 1995

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) MD Docket No. 95-3  
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REPLY COMMENTS OF LDDS COMMUNICATIONS, INC.

February 28, 1995

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**REPLY COMMENTS OF LDDS COMMUNICATIONS, INC.**

LDDS Communications, Inc. ("LDDS") hereby files its reply comments in response to comments filed by other parties in regard to the Notice of Proposed Rulemaking ("Notice") in the above captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

LDDS continues to believe that, in order to prevent harm to certain segments of the interexchange marketplace and to adhere to the statutorily-circumscribed terms of its permissive authority, the Commission must make several important changes to its proposed revised Schedule of Regulatory Fees for Fiscal Year 1995. LDDS submits that any fee structure adopted by the Commission for interexchange carriers should only apply to retail products and services to avoid placing an excessive burden on resale carriers. LDDS, joined by a number of commenters, also believes that the proposed fees for fixed earth stations are excessive and are not based on explicit statutory cost factors as required by Congress. A number of commenters also agree with LDDS that the Commission's regulatory fees should apply to new

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<sup>1</sup> Notice of Proposed Rulemaking, MD Docket No. 95-3, FCC 95-14, released January 12, 1995.

services and should impose higher fees on those common carriers that impose greater regulatory costs on the Commission.

## II. INTEREXCHANGE REGULATORY FEES SHOULD BE BASED ON RETAIL CUSTOMER UNITS

In its initial comments on the Notice, LDDS described at great length the excessive burden that the Commission's proposed fee structures would place on interexchange resale carriers.<sup>2</sup> A number of commenters shared LDDS' concern that the proposed structures would result in resellers paying the regulatory fee at least twice -- once directly to the FCC and a second time indirectly through the rates charged by underlying carriers -- and thus force resellers to bear a disproportionate share of the interexchange regulatory fees.<sup>3</sup> Hertz Technologies, Inc. ("Hertz") expressed the concern well when it said:

This will result in a resale penalty that will both increase the cost to the end user and also reduce the difference between the reseller's rate and the typically higher rate of the facilities-based carrier. These combined effects are inequitable, will damage resellers' ability to compete in the marketplace, and will impede the price competition that has been at the center of the Commission's resale policy.<sup>4</sup>

In its initial comments, LDDS explained that the Commission could remedy this deficiency of its proposed fee structures by applying the fee only to retail interexchange

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<sup>2</sup> See LDDS Comments at 4-18.

<sup>3</sup> See GTE's Comments at 6; TRA Comments at 7; ACTA Comments at 5; CompTel Comments at 6; Hertz Technologies, Inc., Comments at 4; AVIS Comments at 2.

<sup>4</sup> Hertz Comments at 4.

products and services -- products and services sold from one carrier to another for the purposes of resale would be exempt from regulatory fees.<sup>5</sup> Several commenters suggested that the resale double payment issue could be resolved by excluding resellers from the direct payment of regulatory fees.<sup>6</sup> Although this approach may be viable for pure switchless resellers, it would provide no relief for facilities resellers who would pay fees directly based on their presubscribed lines and indirectly through the charges on their leased facilities.<sup>7</sup> The most equitable and consistent method to avoid placing an excessive burden on interexchange resale is to apply the fee only to retail products and services as recommended by LDDS in its comments. This would prevent double collection from any type of resale.

Many parties concur with LDDS that calculating carrier regulatory fees based on the number of customer units is more appropriate than basing the fees on minutes of use ("MOU").<sup>8</sup> LDDS continues to believe that the customer unit approach, applied solely to retail products and services as described above

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<sup>5</sup> See LDDS Comments at 16-18.

<sup>6</sup> See GTE Comments at 7; TRA Comments at 9; Hertz Comments at 6.

<sup>7</sup> Defining the class of resellers to be exempt from fees may prove difficult. Even carriers that own and operate their own networks lease facilities from other carriers when it does not make economic sense to build or augment their own facilities.

<sup>8</sup> See LDDS Comments at 18. See also Bell Atlantic Comments at 1-2; MCI Comments at 2-4; Sprint Comments at 2-4; TRA Comments at 9-10; Hertz Comments at 5-6.

and in its Comments, is the better method of calculating regulatory fees.<sup>9</sup>

Several parties suggest that, rather than either of the alternatives proposed by the Commission, regulatory fees should be based on total interstate revenue in a manner similar to the way Telecommunications Relay Services ("TRS") is funded.<sup>10</sup> WilTel, Inc., which was acquired by LDDS on January 5, 1995, was a consistent opponent of basing funding mechanisms on total interstate revenues and opposed this approach when it was proposed by AT&T with regard to 1994 regulatory fees.<sup>11</sup> Chief among its problems, a total interstate revenue funding mechanism does not recognize the presence of resellers in the marketplace and subjects resellers to the double collection burden described above. It was the TRS funding mechanism that prompted the House Commerce Committee to say:

Any funding mechanism that imposes charges on both resellers and facilities-based providers should be rationalized so that it does not result in a "double-counting" of the fee imposed on resellers. The Committee is aware that the Telecommunications Relay Service fund recognizes no such distinction between resellers and facilities-based providers. As the Commission develops new funding mechanisms, the Committee believes that it must pay heed to the reality

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<sup>9</sup> Several parties noted that the Commission made an error in calculating the proposed per minute fee. See AT&T Comments at 8, MCI Comments at 4-5; NYNEX Comments at 3. If the MOU approach is adopted by the Commission the fee should be .04 per 1000 minutes of use.

<sup>10</sup> See AT&T Comments at 2-7; US West Comments at 5-8; SBC Comments at 2-4; NECA Comments at 2-5.

<sup>11</sup> See WilTel Comments, MD Docket No. 94-19, filed April 7, 1994.

of the marketplace and not result in an unfair "double-counting" on some telecommunications providers.<sup>12</sup>

If the Commission decides to adopt a funding mechanism based on interstate revenues, it must apply the fees to retail revenues only to avoid the double-counting of the fee assessed on resellers.

**III. NUMEROUS COMMENTERS AGREE THAT THE PROPOSED REGULATORY FEES FOR FIXED EARTH STATIONS ARE WHOLLY EXCESSIVE AND ARE NOT BASED ON THE EXPLICIT STATUTORY COST FACTORS REQUIRED BY CONGRESS**

A sizable number of commenters join LDDS in taking strong exception to the FCC's proposed fee structure for fixed earth stations.<sup>13</sup> Many of the commenters point out the often several thousand percent increase in fixed earth station fees that they would be required to pay under the proposed revised Schedule.<sup>14</sup> Several parties note correctly that the fee amounts themselves are not substantiated by any data presented in the

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<sup>12</sup> Report on the Federal Communications Commission Authorization Act of 1994, Committee on Energy and Commerce, U.S. House of Representatives, 103rd Congress, 2nd Session, Report 103-844, October 6, 1994, at 11.

<sup>13</sup> See LDDS Comments at 19-22.

<sup>14</sup> NCTA Comments at 17 (10,000 percent increase in fixed earth station fees over 1994); CATA Comments at 1 (over 8,000 percent increase in fees over 1994); COMSAT Video Comments at 6 (3,000 percent increase in fees over 1994); EDS Comments at 3 (fees are over 3,000 times greater than in 1994); WCAI Comments (fees are almost 500 times greater than in 1994); AP Comments at 2 (fees are 60 times greater than in 1994); Cable Companies Comments at 2 (fees increased from \$6.00 in 1994 to almost \$60,000.00 in 1995); COMSAT Video Comments at 1 (fees increased from \$2,646.00 in 1994 to \$250,000.00 in 1995).

Notice.<sup>15</sup> In fact, according to one commenter, it appears that the Commission has significantly miscalculated the proposed transmit/transmit-receive earth station fees by undercounting the total number of payee units by nearly 13,000; correcting this error alone would lower the fee for these earth stations from \$185.00 to \$111.00 per meter.<sup>16</sup>

Commenters also agree with LDDS that the Commission has not given adequate justification to utilize its limited permissive authority in order to apply a totally different fee structure for fixed earth stations than the one intended by Congress.<sup>17</sup> The FCC failed to analyze the proposed change under the strictly-delineated terms of the statute; for example, no changes in rules or law have affected fixed earth stations, and no statutory benefits factors were considered by the Commission.<sup>18</sup> The Commission also made no "public interest" findings that are required by the statute in order to adopt adjustments to the Schedule.<sup>19</sup> Moreover, commenters are in agreement that the FCC's enforcement, policy and rulemaking,

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<sup>15</sup> NCTA Comments at 17; COMSAT Video Comments at 5-6.

<sup>16</sup> COMSAT Video Comments at 8-9. The error noted here and in n. 9 above provide ample example of why LDDS recommends that the Commission test its fee structure before setting the rates to be paid. See LDDS Comments at 31.

<sup>17</sup> EDS Comments at 2-4; NCTA at 16-17; WCAI Comments at 3-4; Cable Companies Comments at 3-4; CATA Comments at 3-4.

<sup>18</sup> EDS Comments at 4; NCTA Comments at 17-18; WCAI Comments at 3-4; COMSAT Video Comments at 7.

<sup>19</sup> Cable Companies Comments at 4-6.

international activities, and user information services related to earth stations are negligible, and certainly have not increased since 1994.<sup>20</sup> Given these serious infirmities in the Notice, it is obvious that the FCC's resulting cost allocation to the fixed earth stations category must be revised downward because it is wholly excessive and without adequate justification.<sup>21</sup>

**IV. THE FCC'S SCHEDULE SHOULD APPLY TO NEW SERVICES, AND SHOULD IMPOSE HIGHER FEES ON THOSE COMMON CARRIER ENTITIES WHICH IMPOSE GREATER REGULATORY COSTS ON THE COMMISSION**

Like LDDS, several commenters agreed that providers or licensees of newly-recognized communications services, such as Personal Communications Services ("PCS"), Low Earth Orbital ("LEO") satellite service, Commercial Mobile Radio Service ("CMRS"), Direct Broadcasting Satellite ("DBS") service, and video dialtone ("VDT"), should not be exempt from paying their fair share of regulatory fees.<sup>22</sup> NYNEX states that all wireless service parties responsible for regulatory costs should pay an equitable part of those costs.<sup>23</sup> As one example, NYNEX points

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<sup>20</sup> AP Comments at 3; NCTA Comments at 18; WCAI Comments at 4; CATA Comments at 4; COMSAT Video Comments at 12-15.

<sup>21</sup> AP Comments at 4; NCTA Comments at 18; Cable Companies Comments at 3-4; COMSAT Video Comments at 7. One commenter even suggests that, at minimum, the FCC should undertake a detailed accounting which sets forth the line item costs and specific activities allocated to each fixed earth station. COMSAT Video Comments at 7-8.

<sup>22</sup> See LDDS Comments at 22-26.

<sup>23</sup> NYNEX Comments at 4-6.



out that a significant portion of the FCC's fee increase can be attributed to "the Commission's exhaustive, cost-intensive PCS related activities which began in early 1994."<sup>24</sup> Alltel also notes that the FCC's rationale for excusing certain classes of services from paying fees -- the negligible amounts of FTEs assigned to these services other than for application processing -- ignores the fact that "rulemaking, not application processing, is the core justification for the imposition of regulatory fees under Section 9 of the Act."<sup>25</sup> Thus, Alltel urges the Commission to develop an equitable method to recover the rulemaking expense associated with new services. LDDS agrees.

Commenters also concur with LDDS that the FCC's Schedule should distinguish among groups of common carriers based on the regulatory costs imposed, and the benefits received.<sup>26</sup> The Competitive Telecommunications Association ("CompTel") argues that Congress requires the FCC to ensure that "fees are collected from each entity in proportion to the amount expended by the Commission on enforcement, rulemaking, and end user information activities associated with the entity."<sup>27</sup> CompTel states that entities subject to deregulation or streamlined regulatory oversight, or which require only sporadic enforcement or

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<sup>24</sup> Id. at 6 n.6.

<sup>25</sup> Alltel Comments at 3.

<sup>26</sup> See LDDS Comments at 26-29.

<sup>27</sup> CompTel Comments at 2.

policymaking attention, impose a smaller burden on the Commission's resources, and thus should pay less in fees than more heavily regulated entities.<sup>28</sup> As LDDS pointed out in its initial comments, there is a huge and obvious distinction between dominant common carriers -- AT&T and the Regional Bell Operating Companies ("RBOCs") -- and nondominant carriers, in terms of the regulatory costs imposed on the Federal government. The Commission should recognize this crucial cost distinction by adopting a cost-based fee structure which imposes higher regulatory fees on dominant carriers.

#### V. CONCLUSION

For the reasons stated above, LDDS urges the Commission to revise and clarify its proposed 1995 fee schedule. Doing so in the manner recommended here and in LDDS' Comments will ensure equity among industry participants and a continuation of the growing competition in the long distance marketplace.

Respectfully submitted,

February 28, 1995



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<sup>28</sup> *Id.* at 2-3. Alltel also states that the Commission must fairly allocate FTEs among various services within each Bureau "so that FTEs and the resulting fees more closely approximate the level of regulation of a particular service." Alltel Comments at 5. LDDS agrees with Alltel's proposal.

**CERTIFICATE OF SERVICE**

I, Cecelia Y. Johnson, hereby certify that on this 28th day of February, 1995, true copies of the foregoing "REPLY COMMENTS OF LDDS COMMUNICATIONS, INC." were hand delivered to each of the parties listed below.

  
Cecelia Y. Johnson

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